

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

C.H. ROBINSON WORLDWIDE, INC.,
14701 Charlson Road
Eden Prairie, MN 55347

Plaintiff,

v.

PRODUCE DEPOT USA, LLC.
c/o Reg. Agent LegalCorp Solutions, LLC
11 Broadway, Suite 615
New York, NY 10004

and

GAETANO M. BALZANO
6 Mohegan Trail
Saddle River, NJ 07458

and

LUIS A. RUELAS
62 Burtwood Court
Allendale, NJ 07401

and

MICHAEL E. FELIX
91 Edgewood Drive
Orangeburg, NY 10962

Defendants.

CIVIL CASE NO: 1:21-cv-07939-ALC

JUDGE ANDREW L. CARTER, JR.

FIRST AMENDED COMPLAINT¹

With no answer or responsive pleading having been filed or served, Plaintiff C.H. Robinson

¹This complaint is being amended solely for the purpose of adding Michael E. Felix as a party-defendant.

Worldwide, Inc. (“Plaintiff” or “C.H. Robinson”) brings this *amended* civil action against Produce Depot USA, LLC (“Produce Depot”), Gaetano M. Balzano, Luis A. Ruelas and Michael E. Felix, individually and in their corporate capacities (all collectively, “Defendants”), for damages and equitable relief and alleges as follows:

I. JURISDICTION

1. Federal question jurisdiction is vested in this Court pursuant to the Perishable Agricultural Commodities Act, specifically 7 U.S.C. §499e(b)(2) and §499e(c)(5)(i). This Court is also vested with ancillary and/or pendent jurisdiction pursuant to 28 U.S.C. §1367(a) over Plaintiff’s related state-based claims.

II. VENUE

2. Venue is proper in this district pursuant to 28 U.S.C. §1391 in that the sales transactions which are the subject of this action occurred within this district and in that Defendant Produce Depot is domiciled in this district.

III. PARTIES

3. Plaintiff is a Delaware Corporation with its principal place of business in Eden Prairie, Minnesota and is engaged in the business of selling wholesale quantities of fresh fruits and vegetables nationwide. At all times relevant herein, Plaintiff held federal produce license number 20001042 from the U.S. Department of Agriculture/PACA Branch in good and active standing.

4. Defendant Produce Depot is a New York limited liability company with its principal place of business in Bronx, New York. Produce Depot was, at all times relevant herein, acting as a dealer and commission merchant of wholesale quantities of perishable agricultural commodities in New York and as such is subject to the Perishable Agricultural Commodities Act

of 1930, as amended, 7 U.S.C. §499a, *et seq.*, (“PACA”). At all times relevant herein, Produce Depot held federal produce license number 20200157 from the U.S. Department of Agriculture/PACA Branch and/or was subject to licensing. Produce Depot is now closed and out of business.

5. Individual Defendants Gaetano M. Balzano, Luis A. Ruelas and Michael E. Felix (collectively, “Individual Defendants”) are or were owners, officers, directors, members, managers and/or at least 10% equity holders of Produce Depot during the relevant time period, making them “responsibly connected” under PACA. The Individual Defendants are or were persons in control of, and responsible for, the day-to-day operations of Produce Depot and the disposition of Produce Depot’s assets, including its PACA trust assets. The Individual Defendants each had the ability to bind Produce Depot contractually. The Individual Defendants had full decision-making authority over the assets of Produce Depot and are charged with a continuing statutory fiduciary duty to Plaintiff to ensure full payment promptly as mandated by PACA.

IV. CLAIMS FOR RELIEF

COUNT I

DEFENDANT PRODUCE DEPOT

(Failure to Maintain PACA Trust)

6. Plaintiff incorporates each and every allegation set forth in the preceding paragraphs as if fully written herein.

7. At Produce Depot's request, Plaintiff sold on credit and through interstate commerce, wholesale quantities of perishable agricultural commodities to Defendants, as set forth in the following table:

<u>Plaintiff</u>	<u>Dates of Transactions</u>	<u>Commodities</u>	<u>Total Amount Sold</u>	<u>Amount 2 Unpaid</u>
C.H. Robinson Worldwide, Inc	10-20-2020 to 11-13-2020	Fresh Fruits and Vegetables	\$113,404.40	\$113,404.40

8. Plaintiff duly delivered the perishable agricultural commodities to Produce Depot.

9. Produce Depot received and accepted the perishable agricultural commodities from Plaintiff.

10. Pursuant to the payment terms between the parties, Produce Depot is in default with respect to the principal amount of \$113,404.40 outstanding to Plaintiff. *See*, Statement of Account and Unpaid Invoices attached hereto and incorporated herein as "Exhibit A."

11. Pursuant to the trust provision of PACA, 7 U.S.C. §499e(c)(2), and the Code of Federal Regulations promulgated thereunder, upon receipt of said commodities, a statutory trust arose in favor of Plaintiff as to all commodities received, all inventories of food or other products derived from said commodities, and the proceeds from the sale of such commodities until full payment is made for said commodities by Produce Depot to Plaintiff.

12. Produce Depot has failed and refused to pay for the commodities it ordered, received, and accepted from Plaintiff, despite due demand.

13. On each of the outstanding invoices sent by Plaintiff to Produce Depot, Plaintiff, as a PACA licensee, placed the exact language statutorily prescribed by PACA to be placed on all invoices by the licensee to notify the buyer that a seller/supplier of perishable agricultural

² Plus, accruing interest at 1.50% per month and attorney fees and costs.

commodities is preserving its rights as a beneficiary to the statutory trust [7 U.S.C. §499e(c)(4)], plus interest and attorney fees.

14. Plaintiff is an unpaid creditor, supplier, and seller of perishable agricultural commodities as those terms are defined under PACA.

15. Upon information or belief, Produce Depot has dissipated and is continuing to dissipate the *corpus* of the statutory trust which arose in favor of Plaintiff and grew upon each delivery of perishable agricultural commodities.

16. The failure of Produce Depot to hold in trust for the benefit of Plaintiff such perishable agricultural commodities received by it from Plaintiff, and all inventories of food or other products derived from said commodities, and the proceeds from the sale of such commodities until full payment of the sums owing to Plaintiff for said commodities, constitute violations of PACA and PACA Regulations and are unlawful, and, as a direct and proximate result Plaintiff has suffered damages.

COUNT II

ALL DEFENDANTS

(Dissipation of Trust Assets)

17. Plaintiff incorporates each and every allegation set forth in the preceding paragraphs as if fully rewritten herein.

18. Upon information and belief, proceeds obtained from the sale of the perishable agricultural commodities purchased on credit from Plaintiff that were needed to make full payment promptly to trust beneficiaries by PACA, were improperly expended by Produce Depot and the Individual Defendants for other purposes.

19. On each of the outstanding invoices sent by Plaintiff to Produce Depot and the Individual Defendants, Plaintiff, as a PACA licensee, placed the exact language statutorily prescribed by PACA to be placed on all invoices by the licensee to notify the buyer(s) that the seller/supplier of perishable agricultural commodities is preserving its rights as a beneficiary to the statutory trust [7 U.S.C. §499e(c)(4)], plus interest and attorney fees.

20. Upon information and belief, Produce Depot and the Individual Defendants received funds subject to the trust arising under 7 U.S.C. §499e(c), which should have been used to pay the outstanding invoices of Plaintiff but were not.

21. As a direct result of the dissipation of trust assets by Produce Depot and the Individual Defendants, Plaintiff has suffered damages.

COUNT III

DEFENDANT PRODUCE DEPOT

(Failure to Account and Pay for Produce – 7 U.S.C. §499b) (Unfair Conduct))

22. Plaintiff incorporates each and every allegation set forth in the preceding paragraphs as if fully rewritten herein.

23. Produce Depot has failed and refused, without reasonable cause, to account and make full payment promptly of \$113,404.40 to Plaintiff, which sum is unpaid and overdue to Plaintiff for the perishable agricultural commodities ordered, received, and accepted from Plaintiff.

24. The failure and refusal of Produce Depot to account and make said payments to Plaintiff for the commodity sales transactions is a violation of PACA (7 U.S.C. §499b) and PACA regulations, constitutes Unfair Conduct, is unlawful, and, as a direct result, Plaintiff has suffered damages.

COUNT IV

ALL DEFENDANTS

(Breach of Fiduciary Duty / Non-Dischargeability) (11 U.S.C. §523(a))

25. Plaintiff incorporates each and every allegation set forth in the preceding paragraphs as if fully rewritten herein.

26. Upon information and belief, from October 20, 2020 to November 13, 2020, the Individual Defendants managed, controlled, and directed the credit purchase of perishable agricultural commodities from Plaintiff.

27. Upon information and belief, Produce Depot and Individual Defendants received, in the regular course of business, funds subject to the PACA statutory trust which should have been used for the payment of Plaintiff's outstanding invoices but were not.

28. Upon information and belief, Produce Depot and Individual Defendants, in breach of their fiduciary obligations arising under PACA, directed the disbursement of trust funds for purposes other than making full and prompt payment to Plaintiff as required by PACA, 7 U.S.C. §499(b)(4), thereby heightening liability herein to a state of non-dischargeability pursuant to 11 U.S.C. §523(a).

29. As a direct result of the foregoing, Produce Depot and Individual Defendants have violated their fiduciary duties as trustees in failing and refusing to make the payments statutorily required to satisfy the priority trust interests of Plaintiff, and, as a direct result, Plaintiff has suffered damages.

COUNT V

DEFENDANT PRODUCE DEPOT

(Breach of Contract for Unpaid Invoices / Action on Account)

30. Plaintiff incorporates each and every allegation set forth in the preceding paragraphs as if fully rewritten herein.

31. Between October 20, 2020 and November 13, 2020, Produce Depot contracted with Plaintiff to purchase fresh produce on credit. *See*, Exhibit A.

32. Plaintiff faithfully performed all aspects of the sales contract, with Produce Depot receiving and accepting all the produce.

33. Plaintiff properly and timely invoiced each sales transaction, and pursuant to the payment terms between the parties, Produce Depot is in default to Plaintiff on all amounts unpaid and outstanding.

34. Produce Depot breached the contract by failing and refusing to pay Plaintiff the principal sum of \$113,404.40 despite due demand. As a direct result of non-payment, Plaintiff has suffered damages, including interest and attorney fees.

COUNT VI

ALL DEFENDANTS

(Interest and Attorney Fees)

35. Plaintiff incorporates each and every allegation set forth in the preceding paragraphs as if fully rewritten herein.

36. Pursuant to PACA, 7 U.S.C. §499e(c), and the Regulations promulgated thereunder, Produce Depot and the Individual Defendants were statutorily required to maintain a trust in favor of Plaintiff in order to make full payment to Plaintiff of said amount. As a result of the failure of Produce Depot and the Individual Defendants to maintain the trust and to make full

payment promptly, Plaintiff has been required to pay attorney fees and costs in order to bring this action to compel payment of the trust *res*.

37. As a result of the failure of Produce Depot and the Individual Defendants to comply with their statutorily mandated duties to maintain the trust and make full payment promptly, Plaintiff has lost the use of said money.

38. Plaintiff will not receive full payment as required by PACA, 7 U.S.C. §499e(c), if Plaintiff must expend part of said payment on attorney fees, and litigation costs, and also suffer the loss of interest on the outstanding amount owed, all because of violations by Produce Depot and the Individual Defendants of their statutory duties to maintain the trust and make full payment promptly.

39. In addition to the above recitals, Plaintiff maintains express claims for interest and attorney fees based upon the terms of sale stated on each invoice, as between merchants, which were bargained terms of the sales contract. Interest and attorney fees are sums owing in connection with the produce transaction pursuant to 7 U.S.C. §499e(c)(2).

WHEREFORE, Plaintiff C.H. Robinson Worldwide, Inc. respectfully prays that this Court issue an Order:

- a. granting non-dischargeable judgment in favor of Plaintiff and against Defendants Produce Depot USA, LLC, Gaetano M. Balzano, Luis A. Ruelas and Michael E. Felix, jointly and severally, in the principal amount of \$113,404.40, together with pre- and post-judgment interest at the parties' contractual rate plus attorney fees and the costs of this action;
- b. declaring and directing all Defendants to establish and/or preserve the PACA trust fund consisting of funds sufficient to pay Plaintiff's principal trust claim of

\$113,404.40 plus pre- and post-judgment interest at the parties' contractual rate plus attorney fees and costs of this action;

- c. enjoining until the entry of the relief herein requested and compliance therewith, all Defendants and their agents, employees, and representatives from in any way, directly or indirectly, interfering, assigning, or otherwise disposing of the above-described trust fund, or any interest therein, in whole or in part, absolutely or as security;
- d. declaring and directing all Defendants to assign, transfer, deliver, and turn over to Plaintiff as much of the above-described trust fund as is necessary to fully compensate Plaintiff for the damages it has suffered and continues to suffer; and
- e. granting Plaintiff reasonable costs and expenses, including attorney fees in this action, and such other relief, whether in law or in equity, as this Court deems just and proper.

Dated: November 8, 2021.

Respectfully submitted,

s/ Mark A. Amendola
MARK A. AMENDOLA
OH Bar ID No.: 0042645
Admitted herein Pro Hac Vice
MARTYN AND ASSOCIATES
820 W. Superior Avenue, Tenth Floor
Cleveland, Ohio 44113
Telephone: (216) 861-4700
Facsimile: (216) 861-4703
Email: mamendola@martynlawfirm.com

Attorney for Plaintiff C.H. Robinson Worldwide,
Inc.

CERTIFICATE OF SERVICE

A copy of the foregoing First Amended Complaint was electronically filed through the Court's ECF system and served upon all counsel of record this 8th day of November 2021. Additionally, a hard copy of the First Amended Complaint was served via regular U.S. Mail postage pre-paid upon Timothy J. Fierst, The Fierst Law Group P.C., 462 Sagamore Ave., Suite 2, East Williston, NY 11596 on this 8th day of November 2021.

s/ Mark A. Amendola

MARK A. AMENDOLA
Attorney for Plaintiff C.H. Robinson
Worldwide, Inc.

C. H. Robinson Company, Inc.
 C. H. Robinson Fresh
 14701 Charlson Road
 Eden Prairie, MN 55347
 USA
 Fed Tax ID: 41-1956721

STATEMENT

Statement Date: Jul 15, 2021

Customer #: 5506

Page: 1 of 1

Produce Depot USA LLC
 1341 Garrison Ave
 Bronx NY 10474
 USA

<u>Ship Date</u>	<u>Invoice #</u>	<u>PO #</u>	<u>Invoice Amt</u>	<u>Receipt Date</u>	<u>Received</u>	<u>Balance</u>
Oct 20, 2020	825707	958	14,240.00		.00	14,240.00
Oct 22, 2020	826983	987	20,611.35		.00	20,611.35
Oct 28, 2020	829073	1010	21,146.40		.00	21,146.40
Oct 30, 2020	830246	1029	19,006.65		.00	19,006.65
Nov 11, 2020	834138	1111	14,400.00		.00	14,400.00
Nov 12, 2020	834140	1112	12,000.00		.00	12,000.00
Nov 13, 2020	834141	1113	12,000.00		.00	12,000.00
Total Due:						113,404.40

<u>Aging Days:</u>	<u>0 - 30</u>	<u>31 - 40</u>	<u>41 - 60</u>	<u>61 - 999</u>	<u>1000 - 9999</u>	<u>Credits</u>	<u>Total Due</u>
	.00	.00	.00	113,404.40	.00	.00	113,404.40

If paying by statement, please return a copy of this statement with your remittance - Thank You

C.H. Robinson, Inc.
dba Robinson Fresh
14701 Charlson Road
Eden Prairie, MN 55347
USA
Fed Tax ID: 41-1956721

INVOICE

Invoice #: 825707
Invoice: Oct 22, 2020
Ship: Oct 20, 2020
Pay Terms: PACA TERMS

Sold To: Produce Depot USA LLC
1341 Garrison Ave
Bronx NY 10474
USA

Ship To: Produce Depot USA LLC
1341 Garrison Ave
Bronx NY 10474
USA

Page 1 of 1

Sale Terms: FOB	Salesperson: ENCICRY - 401	Carrier: JCE EXP	
Order: Oct 19, 2020	Via:	Trailer lic: 2440CF	St: FL
Cust PO: 958	Currency: USD		

Product ID	Description	Quantity	UOM	Price	Amount
28197	Pineapple BULK-CTN 7 CT Good Delivery MD2 Conventional Tropicana Product of MX	1200	CTN	9.00	10,800.00
8282	Pineapple BULK-CTN 5 CT Good Delivery MD2 Conventional Tropicana Product of MX	224	CTN	10.00	2,240.00
28196	Pineapple BULK-CTN 8 CT Good Delivery MD2 Conventional Tropicana Product of MX	150	CTN	8.00	1,200.00
	Pallet-Wood	21			.00
INVOICE TOTAL:		1574			14,240.00

Balance Due: 14,240.00

Remit to:
C.H. Robinson Company
P.O. Box 9121
Minneapolis, MN 55480-9121
If you have any questions regarding this invoice or your account, please call our AR department at 800-487-1638 or email at CHRFreshARTeam@chrobinson.com

The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5C of the Perishable Agricultural Commodities act, 1930 (7 U.S.C.499E (C)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.
You agree to pay interest at 1.5% per month and any attorney's fees incurred necessary to collect payment. Interest and attorney's fees necessary to collect payment are sums owing in connection with the transaction

Deposit of a check for less than full amount of this invoice shall not constitute an accord and satisfaction, nor a full settlement of this invoice, without prior written agreement.

The terms and conditions above, and those related to any specific service provided by us, including limitation of liability, constitute the complete agreement and contract of the parties, and may only be altered in a written agreement signed by both parties.

C.H. Robinson, Inc.
dba Robinson Fresh
14701 Charlson Road
Eden Prairie, MN 55347
USA
Fed Tax ID: 41-1956721

INVOICE

Invoice #: 826983

Invoice: Oct 28, 2020

Ship: Oct 22, 2020

Pay Terms: PACA TERMS

Sold To: Produce Depot USA LLC
1341 Garrison Ave
Bronx NY 10474
USA

Ship To: Produce Depot USA LLC
1341 Garrison Ave
Bronx NY 10474
USA

Page 1 of 2

Sale Terms: FOB	Salesperson: ENCICRY - 401	Carrier:
Order: Oct 22, 2020	Via:	Trailer lic:
Cust PO: 987	Currency: USD	St:

Product ID	Description	Quantity	UOM	Price	Amount
14527	Apple BULK-CTN 80 SZ WAXF #1 Fuji Conventional . Product of WA-USA	98	CTN	27.95	2,739.10
43208	Apple BULK-CTN 80 SZ WAXF #2 Fuji Conventional . Product of WA-USA	98	CTN	19.95	1,955.10
3753	Apple BULK-CTN 72 SZ WAXF #2 Gala Conventional . Product of WA-USA	39	CTN	15.95	622.05
26983	Apple BULK-CTN 80 SZ WAXF #2 Gala Conventional . Product of WA-USA	28	CTN	15.95	446.60
9887	Apple BULK-CTN 80 SZ USXF Gold Delicious Conventional . Product of WA-USA	98	CTN	17.95	1,759.10
28518	Apple BULK-CTN 80 SZ USXF Granny Smith Conventional . Product of WA-USA	196	CTN	16.95	3,322.20
9071	Apple BULK-CTN 80 SZ WAXF #2 Honeycrisp Conventional . Product of WA-USA	196	CTN	25.95	5,086.20
9383	Apple BULK-CTN 72 SZ WAXF #1 Red Conventional . Product of WA-USA	1	CTN	19.95	19.95
11553	Apple BULK-CTN 80 SZ WAXF #1 Red Conventional . Product of WA-USA	132	CTN	19.95	2,633.40

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C.H. Robinson, Inc.
dba Robinson Fresh
14701 Charlson Road
Eden Prairie, MN 55347
USA
Fed Tax ID: 41-1956721

INVOICE

Invoice #: 826983
Invoice: Oct 28, 2020
Ship: Oct 22, 2020
Pay Terms: PACA TERMS

Sold To: Produce Depot USA LLC
1341 Garrison Ave
Bronx NY 10474
USA

Ship To: Produce Depot USA LLC
1341 Garrison Ave
Bronx NY 10474
USA

Page 2 of 2

Sale Terms: FOB	Salesperson: ENCICRY - 401	Carrier:
Order: Oct 22, 2020	Via:	Trailer lic:
Cust PO: 987	Currency: USD	St:

Product ID	Description	Quantity	UOM	Price	Amount
28803	Apple BULK-CTN 100 SZ WAXF #1 Red Conventional . Product of WA-USA	107	CTN	18.95	2,027.65
INVOICE TOTAL:		993			20,611.35

Balance Due: 20,611.35

Remit to:
C.H. Robinson Company
P.O. Box 9121
Minneapolis, MN 55480-9121
If you have any questions regarding this invoice or your account, please call our AR
department at 800-487-1638 or email at CHRFreshARTeam@chrobinson.com

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C.H. Robinson, Inc.
dba Robinson Fresh
14701 Charlson Road
Eden Prairie, MN 55347
USA
Fed Tax ID: 41-1956721

INVOICE

Invoice #: 829073

Invoice: Oct 30, 2020

Ship: Oct 28, 2020

Pay Terms: PACA TERMS

Sold To: Produce Depot USA LLC
1341 Garrison Ave
Bronx NY 10474
USA

Ship To: Produce Depot USA LLC
1341 Garrison Ave
Bronx NY 10474
USA

Page 1 of 1

Sale Terms: FOB	Salesperson: ENCICRY - 401	Carrier:
Order: Oct 28, 2020	Via:	Trailer lic:
Cust PO: 1010	Currency: USD	St:

Product ID	Description	Quantity	UOM	Price	Amount
55755	Tomato BULK 25 LB XX LARGE Good Delivery Roma Conventional . Product of MX	1097	CTN	13.35	14,644.95
25649	Tomato BULK 25 LB X LARGE Good Delivery Roma Conventional . Product of MX	487	CTN	13.35	6,501.45
INVOICE TOTAL:		1584			21,146.40
Balance Due:					21,146.40

Remit to:
C.H. Robinson Company
P.O. Box 9121
Minneapolis, MN 55480-9121
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C.H. Robinson, Inc.
dba Robinson Fresh
14701 Charlson Road
Eden Prairie, MN 55347
USA
Fed Tax ID: 41-1956721

INVOICE

Invoice #: 830246

Invoice: Nov 02, 2020

Ship: Oct 30, 2020

Pay Terms: PACA TERMS

Sold To: Produce Depot USA LLC
1341 Garrison Ave
Bronx NY 10474
USA

Ship To: Produce Depot USA LLC
1341 Garrison Ave
Bronx NY 10474
USA

Page 1 of 1

Sale Terms: FOB	Salesperson: ENCICRY - 401	Carrier:
Order: Oct 30, 2020	Via:	Trailer lic:
Cust PO: 1029	Currency: USD	St:

Product ID	Description	Quantity	UOM	Price	Amount
25649	Tomato BULK 25 LB X LARGE Good Delivery Roma Conventional . Product of MX	1539	CTN	12.35	19,006.65
INVOICE TOTAL:		1539			19,006.65

Balance Due: 19,006.65

Remit to:
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P.O. Box 9121
Minneapolis, MN 55480-9121
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C.H. Robinson, Inc.
 dba Robinson Fresh
 14701 Charlson Road
 Eden Prairie, MN 55347
 USA
 Fed Tax ID: 41-1956721

INVOICE

Invoice #: 834138

Invoice: Nov 18, 2020

Ship: Nov 11, 2020

Pay Terms: PACA TERMS

Sold To: Produce Depot USA LLC
 1341 Garrison Ave
 Bronx NY 10474
 USA

Ship To: Produce Depot USA LLC
 1341 Garrison Ave
 Bronx NY 10474
 USA

Page 1 of 1

Sale Terms: DLVD	Salesperson: ENCICRY - 401	Carrier:
Order: Nov 10, 2020	Via:	Trailer lic:
Cust PO: 1111	Currency: USD	St:

Product ID	Description	Quantity	UOM	Price	Amount
39005	Sweet Potato BULK 40 LB Good Delivery Orange Conventional . Product of NC-USA Freight - Pallet	1000	CTN	12.00	12,000.00
				2,400.00	2,400.00
INVOICE TOTAL:		1000			14,400.00
Balance Due:					14,400.00

Remit to:
 C.H. Robinson Company
 P.O. Box 9121
 Minneapolis, MN 55480-9121
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 department at 800-487-1638 or email at CHRFreshARTeam@chrobinson.com

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C.H. Robinson, Inc.
dba Robinson Fresh
14701 Charlson Road
Eden Prairie, MN 55347
USA
Fed Tax ID: 41-1956721

INVOICE

Invoice #: 834140
Invoice: Nov 18, 2020
Ship: Nov 12, 2020
Pay Terms: PACA TERMS

Sold To: Produce Depot USA LLC
1341 Garrison Ave
Bronx NY 10474
USA

Ship To: Produce Depot USA LLC
1341 Garrison Ave
Bronx NY 10474
USA

Page 1 of 1

Sale Terms: FOB	Salesperson: ENCICRY - 401	Carrier:
Order: Nov 10, 2020	Via:	Trailer lic:
Cust PO: 1112	Currency: USD	St:

Product ID	Description	Quantity	UOM	Price	Amount
39005	Sweet Potato BULK 40 LB Good Delivery Orange Conventional . Product of NC-USA	1000	CTN	12.00	12,000.00
INVOICE TOTAL:		1000			12,000.00
Balance Due:					12,000.00

Remit to:
C.H. Robinson Company
P.O. Box 9121
Minneapolis, MN 55480-9121
If you have any questions regarding this invoice or your account, please call our AR
department at 800-487-1638 or email at CHRFreshARTeam@chrobinson.com

The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5C of the Perishable Agricultural Commodities act, 1930 (7 U.S.C.499E (C)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.
You agree to pay interest at 1.5% per month and any attorney's fees incurred necessary to collect payment. Interest and attorney's fees necessary to collect payment are sums owing in connection with the transaction

Deposit of a check for less than full amount of this invoice shall not constitute an accord and satisfaction, nor a full settlement of this invoice, without prior written agreement.

The terms and conditions above, and those related to any specific service provided by us, including limitation of liability, constitute the complete agreement and contract of the parties, and may only be altered in a written agreement signed by both parties.

C.H. Robinson, Inc.
dba Robinson Fresh
14701 Charlson Road
Eden Prairie, MN 55347
USA
Fed Tax ID: 41-1956721

INVOICE

Invoice #: 834141
Invoice: Nov 18, 2020
Ship: Nov 13, 2020
Pay Terms: PACA TERMS

Sold To: Produce Depot USA LLC
1341 Garrison Ave
Bronx NY 10474
USA

Ship To: Produce Depot USA LLC
1341 Garrison Ave
Bronx NY 10474
USA

Page 1 of 1

Sale Terms: FOB	Salesperson: ENCICRY - 401	Carrier:
Order: Nov 10, 2020	Via:	Trailer lic:
Cust PO: 1113	Currency: USD	St:

Product ID	Description	Quantity	UOM	Price	Amount
39005	Sweet Potato BULK 40 LB Good Delivery Orange Conventional . Product of NC-USA	1000	CTN	12.00	12,000.00
INVOICE TOTAL:		1000			12,000.00
Balance Due:					12,000.00

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THE FIERST LAW GROUP, P.C.
Timothy J. Fierst (TF3247)
462 Sagamore Avenue, Suite 2
East Williston, New York 11596
(516) 586-4221
tfierst.law@gmail.com

*Attorneys for Defendants Produce Depot USA LLC,
Gaetano M. Balzano and Luis A. Ruelas*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
C.H. ROBINSON WORLDWIDE, INC.,

Case No. 21-cv-07939(ALC)

Plaintiff,

Against

ANSWER

PRODUCE DEPOT USA LLC, GAETANO M. BALZANO,
LUIS A. RUELAS, MICHAEL E. FELIX,

Defendants.

The defendants, PRODUCE DEPOT USA LLC (“Produce”), GAETANO M. BALZANO and LUIS A. RUELAS (“Luis”) (collectively, the “Defendants”) by and through their attorneys, The Fierst Law Group, P.C., as and for their Answer to the First Amended Complaint of the Plaintiff dated November 8, 2021 (the “Complaint”), respectfully alleges as follows:

1. Admits the allegations contained within paragraph 4 to the Complaint.
2. Denies the allegations contained within paragraphs 5, 18, 20, 21, 26, 27, 28, 29, 36, 37, 38 and 39 to the Complaint.
3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained within paragraphs 1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 22, 23, 24, 25, 30, 31, 32, 33, 34 and 35 to the Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

4. Plaintiff's Complaint fails to allege facts that state any claim upon which relief can be granted because, among other reasons, the defendants Guy and Luis are not individuals which are or were in custody, control or management of the defendant Produce's business.

SECOND AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

5. Plaintiff has failed to mitigate or attempt to mitigate damages, if in fact any damages have been or will be sustained, and any recovery by Plaintiff must be diminished or barred by reason thereof.

THIRD AFFIRMATIVE DEFENSE
(Failure to Name Proper Party)

6. Plaintiff is estopped from obtaining the relief it demands as it has failed to name the proper party defendants, *to wit*, the proper owner/members of Produce.

FOURTH AFFIRMATIVE DEFENSE
(Unclean Hands)

7. Plaintiff should be charged with knowledge of the terms of Produce's Operating Agreement in order to do business with Produce.

8. Plaintiff's claims are barred, in whole or in part, by the equitable doctrine of unclean hands, and the amounts demanded by Plaintiff for the alleged contractual amount due is in direct violation of Produce's Operating Agreement which requires the unanimous consent of Produce's members, the terms of which Plaintiff are charged with knowledge.

FIFTH AFFIRMATIVE DEFENSE
(Conduct of Third Party)

9. Plaintiff's claims are barred, in whole or in part, as the acts complained of by the Plaintiff were occasioned through the conduct of co-defendant Michael E. Felix ("Felix") with whom Plaintiff dealt, in violation of his fiduciary duties as a member of Produce, which conduct was and remains unknown and unsanctioned by Produce, Guy and Luis.

SIXTH AFFIRMATIVE DEFENSE
(Offset)

10. Any recovery by the Plaintiff should be offset by all amounts due and owing to the Plaintiff by the co-defendant Michael E. Felix.

SEVENTH AFFIRMATIVE DEFENSE
(Documentary Evidence)

11. Plaintiff's claims are barred in whole or in part by the documentary evidence in this action including but not limited to bills of lading and executed purchase orders.

EIGHTH AFFIRMATIVE DEFENSE
(Additional Affirmative Defenses)

12. The Defendants hereby state that they do not presently know all facts concerning the claims alleged by the Complaint sufficient to state all affirmative defenses at this time. Defendants will seek to amend this Answer should it later discover facts demonstrating the existence of additional affirmative defenses.

PRAYER FOR RELIEF

WHEREFORE, the Defendants pray that this Court:

(a) Dismiss the Plaintiff's Complaint;

(b) Such other and further relief as to the Court is deemed just and proper.

Dated: East Williston, New York
December 15, 2021

Yours, etc.

THE FIERST LAW GROUP, P.C.

*Attorneys for the Defendants Produce Depot
USA LLC, Gaetano M. Balzano and Luis A.
Ruelas*

By: 

Timothy J. Fierst (TF:3247)

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